

9-184A103



June 28, 1989

**Itel Rail Corporation**

55 Francisco Street  
San Francisco, California 94133  
(415) 984-4000  
(415) 781-1035 Fax

RECORDATION #10 16411-A FILED 1425

JUL 5 1989 -10 15 AM

INTERSTATE COMMERCE COMMISSION

Hon. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

Re: Schedule No. 1 to Master Lease dated June 6, 1989, between  
Pullman Leasing Company and Indiana Hi-Rail Corporation

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Schedule under the Master Lease dated June 6, 1989, between Pullman Leasing Company and Indiana Hi-Rail Corporation, which is being filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

Pullman Leasing Company (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Indiana Hi-Rail Corporation (Lessee)  
Rural Route 1  
Connersville, Indiana 47331

This Schedule adds to the Master Lease twenty (20) 4750 cubic foot, 100-ton covered hopper cars bearing reporting marks 8301-8320.

Please return to the undersigned the stamped counterparts required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

*Patricia Schumacker*

Patricia Schumacker  
Legal Department

PS:

RECEIVED  
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5 10 55 AM '89  
NOTOR SECRETARY UNIT

JUL 5 1989 -10 15 AM

## SCHEDULE NO. 1 TO MASTER LEASE

INTERSTATE COMMERCE COMMISSION

THIS SCHEDULE NO. 1 ("Schedule") to that certain Lease Agreement (the "Agreement") made as of JUNE 6, 1989 between PULLMAN LEASING COMPANY as lessor ("Lessor"), and INDIANA HI-RAIL CORPORATION as lessee ("Lessee"), is made this 6<sup>th</sup> day of JUNE, 1989, by and between Lessor and Lessee.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 1, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig.	Description	Numbers	Dimensions Inside		No. of Cars
			Length	Width	
LO	4750 c.f., 100-ton covered hoppers	GSOR 8301- 8320	55'3"	10'	20

3. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date such Car is remarked ("Delivery") and shall continue as to all of the Cars described in this Schedule for five (5) years from the earlier of (i) the date on which the last Car described in this Schedule was remarked or (ii) sixty (60) days from the date the first Car described in this Schedule was delivered to Lessee's lines (the "Initial Term"). Upon the Delivery of the final Car, Lessor shall provide Lessee with a Certificate of Delivery in the form of Exhibit A attached hereto, including the Delivery date for each Car and the expiration date of the Agreement with respect to the Cars described in this Schedule. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.
4. Lessee shall, at its expense, remark each Car to bear its reporting marks. Lessor shall use its best efforts to minimize Lessee's transportation expenses when initially moving the Cars to Lessee's lines.

5. A. Lessee shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement. Lessee shall register each Car in UMLER placing the letters designated by Lessor in owner's field in such a manner that Lessor, or its agent, is allowed access to any required information including but not limited to Train 62 Junction Advices and the Train 65, 67, 71 and 80 Advices with regard to each Car. If Lessee fails to register or improperly registers any Car in UMLER, Lessee shall be responsible for an amount equal to the revenues that would have been earned by such Car had it been properly registered in UMLER.
- B. Lessee shall submit to Lessor a monthly report in complete AAR format for all sums due to Lessee from Lessor for such calendar month with respect to the maintenance of the Cars, including sums due for maintenance performed by third parties and for maintenance performed by Lessee. Lessor shall pay to Lessee all sums due pursuant to this Subsection within thirty (30) days after receipt of such monthly maintenance report and bill.
6. Lessor shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule, except as set forth in Section 5 of the Agreement. With respect to the Cars listed in this Schedule, Exhibit B attached hereto is hereby added to the Agreement. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
7. Lessee assumes responsibility for and agrees to pay, defend, hold harmless and indemnify Lessor and its successors against all taxes, fees, levies, imposts, duties or withholdings of any nature, together with penalties, fines or interest thereon, imposed on, incurred by, asserted against or imposed upon: (1) the Cars; (2) the lease, sublease or delivery of the Cars; and (3) the revenues earned by the Cars, including, but not limited to, mileage charges and/or car hire revenues earned during the Initial Term or any extended term of the Agreement; provided, however, that Lessee shall not be responsible for taxes on income imposed on Lessor while Cars are on Lessee's lines. Lessee will comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars.
8. Rent
  - A. Definitions
    - (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties. Unless Lessor and Lessee agree otherwise, any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party, effective

on the date of such sale, during the Initial Term or any extended term are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 8.A.(iii) hereinbelow).

- (ii) "Revenue Rates" is defined as the hourly and mileage car hire rates specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the January 1989 edition of The Official Railway Equipment Register.
- (iii) "Revenues" is defined as the total revenues, calculated at the Revenue Rates, that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to, per diem and mileage, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.
- (iv) "Lessor's Revenue Share" is defined as of all Revenues earned in any calendar quarter or applicable portion thereof ("Quarter").
- (v) "Lessee's Revenue Share" is defined as of all Revenues earned in any Quarter.
- (vi) The "Minimum Amount" is defined as per Car per Quarter. The Minimum Amount for any Car which is not subject to the Agreement for an entire Quarter shall be prorated at per day for such Car during such Quarter.
- (vii) The "Maximum Mileage" for each Car shall be forty thousand (40,000) miles per calendar year, or three thousand three hundred and thirty-three (3,333) miles per calendar month for any Car that is not subject to the Agreement for a full calendar year.
- (viii) "Initial Loading" of a Car shall be the earlier to occur of either: 1) the date such Car shall have been loaded off Lessee's railroad line with the first load of freight; or 2) the thirty-first (31st) day after such Car is first received on Lessee's lines.

B. Lessor shall receive all Revenues earned by each Car prior to its Initial Loading. Each Car delivered pursuant to Subsection 3.A. of the Agreement shall become subject to the rental calculation under Subsection 8.C. hereinbelow upon the Initial Loading of such Car; provided, however, that Lessor shall receive and be entitled to all

Revenues earned by such Car after such Initial Loading, including Lessee's Revenue Share until the total amount of Lessee's Revenue Share received by Lessor shall have become equal to Lessor's expenses for delivering such Car to Lessee ("Delivery Expense").

C. Lessee agrees to pay rent to Lessor for the Cars calculated as follows:

- (i) For each Quarter, Lessor shall receive an amount equal to Lessor's Revenue Share and Lessee shall retain an amount equal to Lessee's Revenue Share.
- (ii) In the event Lessor's Revenue Share in any Quarter is less than the Minimum Amount, then in addition to Lessor's Revenue Share Lessee shall pay to Lessor an amount equal to the difference between the Minimum Amount and Lessee's Revenue Share for such Quarter.
- (iii) In addition, immediately after the end of each year of the Initial Term, Lessor shall determine the total number of miles that each Car traveled during such year, loaded and empty. If it is determined that any Car traveled in excess of the Maximum Mileage in such year, then Lessee agrees to pay to Lessor an amount equal to two cents (\$0.02) per mile that such Car traveled in excess of the Maximum Mileage during such year. The determination of the total number of miles traveled by each Car during any year shall be made by multiplying the total number of miles that such Car traveled while loaded by two (2), unless Lessor has in its possession information sufficient to ascertain the exact mileage traveled by such Car during such year.

- D. (i) In the event that as a result of any action or inaction by Lessee, Lessor shall receive or earn for the use of any Cars, Revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified in Subsection 8.A. (ii), Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the Revenues such Cars would have earned at the Revenue Rates and the amount of revenues actually received or earned for such Cars.
- (ii) Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor the amount of such abatement, reduction or offset.
  - (iii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, Lessee shall supply Lessor with

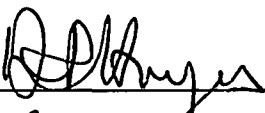
records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.

- E. The calculations required in Section 8, including those for excess mileage, shall be made within five (5) months of the end of each calendar year ("Final Calculations"). Lessee shall pay to Lessor by the seventieth (70th) day after the end of each Service Month (as hereinafter defined), eighty percent (80%) of the total revenues for that Service Month. For the purposes hereof, "Service Month" shall be defined as the calendar month in which revenues were actually earned. At the time payment of eighty percent (80%) of the total revenues is made to Lessor, Lessee shall report to Lessor for the same month the hours earned, miles traveled and dollar figure for one hundred percent (100%) of the revenues. Ten percent (10%) of the revenues shall be remitted to Lessor within one hundred (100) days after the end of each Service Month and the remaining ten percent (10%) of the total revenues shall be remitted to Lessor within one hundred thirty (130) days after the end of each Service Month. Lessor shall within three (3) months of the end of each calendar quarter, calculate on a quarterly year-to-date basis, the approximate amount, if any, due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, provided, however, that within twenty (20) days following the Final Calculations, Lessee shall pay Lessor for all excess mileage pursuant to Subsection 8.C.(iv) if applicable, and any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.
9. A. Lessee agrees to defend, indemnify and hold Lessor harmless from any and all claims, losses, damages, liabilities, costs, and expenses (including attorney's fees) with respect to, caused by, or arising out of the Cars which are occasioned by the fault of Lessee, occur while the Cars are in Lessee's possession or control, or would be the "handling carrier's" responsibility under the Interchange Rules, as if the Cars were not bearing Lessee's reporting marks.
- B. Except as provided in Subsection 9.A. above, and except for those claims, losses, damages, liabilities and expenses for which Lessee shall be responsible as set forth in this Agreement, Lessor shall indemnify and hold Lessee harmless from any and all loss, damage or destruction of or to the Cars, ordinary wear and tear excepted.
- C. The indemnities and assumptions of liability contained in this Agreement shall survive the expiration or termination of the Agreement.

10. Upon the expiration or termination of the Agreement with respect to the Cars described in this Schedule, if some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to said tracks subsequent to the time of expiration of this Agreement as to the Cars. Lessee shall, at Lessor's option, provide up to one hundred twenty (120) days' free storage on its railroad tracks for any Car which is either on Lessee's railroad tracks at expiration or is subsequently returned to Lessee's railroad tracks. Said one hundred twenty (120) days shall run either from expiration or from the date such Car is returned to Lessee's railroad line subsequent to expiration, whichever date is later. If requested to do so by Lessor, Lessee shall, at Lessor's option, either move a remarked Car to an interchange point on Lessee's lines selected by Lessor or use its best efforts to load the remarked Car with freight and deliver it to a connecting carrier for shipment.
11. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.
12. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

PULLMAN LEASING COMPANY

INDIANA HI-RAIL CORPORATION

By:   
Title: President  
Date: 6/16/89

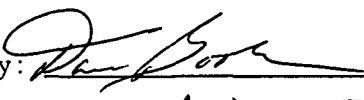
By:   
Title: Vice President Equipment and Administration  
Date: 6-6-89

EXHIBIT A

CERTIFICATE OF DELIVERY DATE

Exhibit A to Schedule No. 1 dated as of \_\_\_\_\_, 1989,  
between PULLMAN LEASING COMPANY as lessor ("Lessor") and INDIANA HI-RAIL  
CORPORATION as lessee ("Lessee"), to the Lease Agreement dated as of \_\_\_\_\_  
\_\_\_\_\_, 1989, by and between Lessor and Lessee.

CAR REPORTING  
MARKS AND NUMBER

DELIVERY DATE

*To Follow*

The last day of the Initial Term for the above referenced Cars shall be

\_\_\_\_\_.

By: *[Signature]*

Title: *Vice President Equipment and Administration*

Date: *6-6-89*



EXHIBIT B

Running Repairs: Covered Hoppers

Angle Cocks	Wheels
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Outlet Gate Repair (Not Gate Replacement)
Hand Brakes	Hatch Cover Repair (Not Replacement of Hatch Cover)
Brake Beams and Levers	
Truck Springs	

STATE OF CALIFORNIA       )  
  ) ss:  
COUNTY OF SAN FRANCISCO )

On this 16<sup>th</sup> day of June, 1989, before me personally appeared Diamond P. Hayes to me personally known, who being by me duly sworn says that such person is President of Pullman Leasing Company, that the foregoing Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan  
Notary Public



STATE OF Indiana )  
  ) ss:  
COUNTY OF Fayette )

On this 6<sup>th</sup> day of June, 1989, before me personally appeared David Booker to me personally known, who being by me duly sworn says that such person is V.P. Equipment & Admin. of Indiana Hi-Rail Corporation that the foregoing Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Myla Dee Fabeu  
Notary Public